

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1227 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-
and
Hon'ble MR.JUSTICE H.K.RATHOD sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

BHIKHUP AGARWAL

Versus

LILABEN LALJIBHAI VALA

Appearance:

MR AJAY R MEHTA for Petitioners
MR SHIRISH JOSHI for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA
and
MR.JUSTICE H.K.RATHOD

Date of decision: 09/02/2000

ORAL JUDGEMENT

(Per : D.C.Srivastava, J.)

1. This is an Appeal against the Award of the Motor Accident Claim Tribunal, Bhavnagar, dated 24.9.1996, awarding a sum of Rs.6,40,000/- as compensation together with interest at the rate of 15 per cent from the date of application till realisation with proportionate cost.

2. Shri A.R.Mehta, learned Counsel for the appellant and Shri Shirish Joshi, learned Counsel for the respondent have been heard on admission of this Appeal as well as its final hearing. The Appeal is admitted. With consent of the learned Counsel for the parties the Appeal is finally disposed of without summoning the record.

3. Deceased Laljibhai was driver in Bhavnagar Jilla Sahakari Bank Ltd. and had served there for the last 15 years. On the date of accident he was driving ambassador Car No.GJ-4-9528 and was coming towards Ahmedabad. He was driving the car slowly and carefully. When he reached between Dhandhuka and Bagodara, one oil tanker No.GJ-10-T-7952 was coming from behind. The opponent No.2 in the Tribunal was the owner of the Oil Tanker and opponent No.3 was the Insurance company which had insured the tanker. It was alleged that the tanker was being driven rashly and negligently with full speed and without taking proper care it over-took the car driven by the deceased. In this process the tanker hit the ambassador car as a result of which the deceased driver lost his life. The middle portion of the tanker hit the front portion of the ambassador car. The deceased died on the spot. He was aged 45 years on the date of accident. He was earning Rs.4,000/- per month as salary and also the Bonus at the rate of 20 % of the salary in each year. Two months' overtime in a year was also given to the deceased by the Bank. In the claim petition it was stated that monthly income of the deceased was between Rs.5500/- to Rs.6000/-.

4. The claim petition was contested by the Insurance Company who is appellant before us on variety of grounds. Negligence of the driver of the tanker was repudiated. The claim raised by the claimant was said to be excessive and exorbitant. It was maintained that the accident did not happen due to the fault of the driver of oil tanker. It was alleged that the driver of the tanker was attempting to overtake the Ambassador car and after the driver received signal from the car driver he proceeded further, but in the mean time the car suddenly took turn towards right and accident took place. It was therefore alleged that the accident occurred due to negligence and rashness of the deceased driver.

5. The Tribunal after considering the entire evidence on record came to the conclusion that the accident had happened only because of rash and careless driving by the driver of the tanker and the driver of the Ambassador car was not at all careless in driving his vehicle.

6. On the point of compensation the Tribunal came to the conclusion that the claimants are entitled to get compensation of Rs.6,40,000/- together with interest at the rate of 15 % from the date of application till its realisation with proportionate cost.

7. Shri Mehta, learned Counsel for the Appellant has challenged this Award of the Tribunal. However, he remained unsuccessful in satisfying us that the findings of the Tribunal that the accident took place because of the negligent, rash and careless driving of the oil tanker by its driver, is in any way erroneous. The driver of the Ambassador car expired immediately after the accident at the spot. The driver of oil tanker was not examined before the Tribunal nor he filed any written statement. The owner of the oil tanker also did not file any evidence. Consequently, the best eye witnesses were not produced and as such the findings of the Tribunal holding that the accident took place due to rash and negligent driving by the driver of the oil tanker does not require any interference. It cannot be held that the driver of the Ambassador car was negligent or rash or careless in driving the car.

8. Now coming to the question of compensation, Shri Mehta has argued that the monthly salary and prospective salary of the deceased was not correctly assessed by the Tribunal. From the evidence on record it is clear that the deceased was drawing his salary of Rs.4000/- per month on the date of accident. He was also paid 20 % bonus per year. The deceased was also paid over time for a period of two months in a year. Hence computing this calculation in mind, the Tribunal came to the conclusion that the monthly salary of the deceased was at Rs.5500/to Rs.6000/-. The Salary register was also considered by the Tribunal where in the year 1994 gross payment of Rs.45,821/- was recorded in the Register. It was further found that in the year 1995 the deceased had worked for eight months and seven days. Thus, after considering the oral as well as documentary evidence the Tribunal has rightly concluded that the deceased would have received total salary of Rs.9,30,777/-. Hence, considering all the facts and circumstances of the case the Tribunal

found that the prospective monthly income of the deceased could be considered at Rs.7750/- per month, which comes to Rs.93,000/- per year. On the basis of Birth Certificate the Tribunal found that the age of deceased at the time of the accident was 45 years. There is no evidence in rebuttal. As such it is apparent that multiplier of 10 was wrongly assessed by the Tribunal. It should have assessed the compensation at multiplier of 15. If this multiplier is taken then the total assessment of the Tribunal does not suffer from any error on the higher side. If we enhance the multiplier from 10 to 15 then the compensation worked out by the Tribunal at Rs.6,20,000/cannot be said to be excessive. Over and above this, Rs.20,000/- was awarded as compensation for loss of estate. In this way the figure of Rs.6,40,000/worked out by the Tribunal does not seem to be excessive. The quantum of compensation, therefore, requires no interference.

9. Shri Mehta, however, rightly contended that the interest at the rate of 15 % from the date of application till realisation is excessive. We are agreed with this contention. Interest of justice will be met if the interest is reduced at the rate of 12 % p.a. from the date of application till the date of realisation.

10. No other contention was raised. The Appeal, therefore, succeeds in part, and while maintaining the compensation of Rs.6,40,000/- we reduce the interest to 12 % from the date of application to the date of realisation. The Appellant shall deposit the amount so calculated within six weeks, less the amount already deposited before the Tribunal. The Tribunal has given certain other directions as to how the deposits are to be dealt with. Shri Joshi states that 20 % amount directed by the Tribunal to be paid to the applicant by A/c. Payee cheque has already been received. Shri Joshi, however, requests that other directions of the Tribunal should be modified. The claimants are not in a mood to raise any loan on the amount deposited with the Bank. However, he states that Minor Sonal Lalji is aged about 16 years and is likely to be married shortly. As such an application can be moved before the Tribunal on behalf of this minor as and when he is to be married and the Tribunal after considering the requirements shall pass appropriate order directing payment of such amount as it thinks fit for performing marriage of minor Sonal Lalji. The remaining amount deposited by the appellant now shall be deposited in the joint names of the applicants with some Nationalised Bank for a period of 10 years with liberty to seek part withdrawal for meeting marriage

expenses of Sonal Lalji with permission of the Tribunal.
The direction of the Tribunal prohibiting the bank from
granting loan to the claimants is maintained.

sd/-

(D. C. Srivastava, J.)

Date : February 09, 2000 sd/-

(H. K. Rathod, J.)

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